desired, it could transfer the custody of the children to whomsoever it chose. The decisions amply sustain this position. Thus a statute enacting that the custody of children under seven years of age should belong to the mother in case the parents separated has been held constitutional,[4] and furthermore, in determining who shall care for a minor, courts of chancery or probate courts, whenever a controversy arises, exercise a sound discretion, and frequently deprive the father of his custody if it seems wise, although he may be entirely competent to care for him.[5]

It was further argued by counsel that, as the child had been deprived of his liberty without a jury trial, the constitutional provision guaranteeing jury trial had been violated. The proceeding is certainly not an infringement of the provision, for this is not in any aspect a criminal proceeding. The judgment is that the child is delinquent and as such needs the care of the state. The whole purpose of the commitment is the reformation of the child and not his punishment. Furthermore, the child is not even being deprived of his "liberty," as that word is used in the constitutions. The state is exercising parental restraint, a restraint which is perhaps more severe than that usually exercised by a father, because of the peculiar viciousness of the child. The imposition of such restraint has always been legitimate. Were there any doubt of the validity of this reasoning, it is resolved by an examination of the cases, which fully support it.[6]

ESTOPPEL OF TENANT TO DENY LANDLORD'S TITLE. — The present doctrine of estoppel between landlord and tenant, first enunciated some hundred and fifty years ago,[1] is purely equitable and essentially different from the old legal estoppel by deed,[2] which expired with the term granted by the deed.[3] In giving up possession of land to a tenant, the owner of course relies on the lessee's recognition of him as owner of the land; and to force the lessor in any action for rent or possession, whether before or after the term has ended, to prove his title would work hardship on him, and tend to discourage landowners from parting with possession of their property. Modern law in such cases protects the landlord by raising, from the permissive occupation of the tenant, an equitable estoppel to deny the landlord's title.[4]

Where the lessee is already in possession of the land demised to him, it cannot be urged that the landlord has given him possession of the land, and on this reasoning it has been held that an estoppel does not arise.[5] It is argued that not only is the lessor not worse off, but that he is even in a better position, since he has gained rent, and, in the event of a controversy, a *prima facie* case against the occupant. But the great majority of American

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[4] Bennet *v.* Bennet, 13 N. J. Eq. 114.

[5] Jones *v.* Darnall, 103 Ind. 569. For a careful review of the decisions see Hurd, Habeas Corpus 461 *et seq.*

[6] *Ex parte* Nichols, 110 Cal. 651; Prescott *v.* State of Ohio, 19 Oh. St. 184; *contra*, People *ex rel.* O'Connell *v.* Turner, 55 Ill. 280. See, however, Petition of Ferrier, 103 Ill. 367.

[1] Doe *v.* Pegge, 1 T. R. 758, notes.

[2] Lit. § 58.

[3] Co. Lit. 47 b.

[4] See 2 Taylor, Landlord and Tenant, 9th ed., §§ 629, 705.

[5] Franklin *v.* Merida, 35 Cal. 558.

jurisdictions recognize the estoppel,[6] unless fraud or mistake makes it inequitable,[7] reasoning that the creation of the relationship of landlord and tenant in itself alters the position of the parties.

The Supreme Court of Georgia, in a recent decision, though professing to accept the doctrine of this second class of cases even though the lessee at the time of the plaintiff's lease was already in possession under a third person, limits the estoppel in favor of the second lessor to the duration of the second term. *Hodges* v. *Waters*, 52 S. E. Rep. 161. The decision seems almost to confound the legal estoppel of Lord Coke with the present equitable estoppel. It has been held, in a state of facts similar to those in the present case, that the tenant, by notice to the second landlord, may terminate the tenancy with the term demised, though he continues in possession.[8] In the present case he failed to do so; and the plaintiff, thus lulled into security, allowed the holding over to develop by lapse of time into a tenancy from year to year,[9] and permitted the relationship of landlord and tenant to continue. The landlord's position is, then, no better than during the existence of the original term, when it seemed equitable to raise the estoppel, and the termination of the lease should be without effect on the continuance of the estoppel.

RECENT CASES.

ACTIONS — MOTIVE IN INSTITUTING ACTION AS DEFENCE THERETO. — The plaintiff, with the object of bringing about the bankruptcy of the defendant, a co-director, and of having him thereby disqualified and removed from the directorate, took an absolute assignment from the defendant's creditors, with a covenant that the amount of the debts recovered, less costs, should be paid over to the assignors; and notice of the assignment was given to the defendant. *Held*, that the plaintiff may maintain an action against the defendant for the debts so assigned. *Fitzroy* v. *Cave*, 93 L. T. R. 499 (Eng., C. A., June 9, 1905).

Although the question how far a defendant's motive should determine his liability for causing damage to a plaintiff is involved in much conflict, the courts are harmonious in holding that even the most reprehensible motive does not make him liable for causing the plaintiff to suffer the consequences of the latter's own breach of duty. See 18 HARV. L. REV. 411, 412. Thus, the most vindictive motive does not give rise to a cause of action for ejecting a trespasser or for collecting a debt. *Brothers* v. *Morris*, 49 Vt. 460; *South Royalton Bank* v. *Suffolk Bank*, 27 Vt. 505. Neither can the motive for suing a trespasser or a debtor furnish a defence to the action. *Jacobson* v. *Van Boening*, 48 Neb. 80; *Bragg* v. *Raymond*, 11 Cush. (Mass.) 274. And even where the plaintiff, with evil motive, procures an assignment of a mortgage to foreclose it, or becomes a shareholder in order to enjoin a corporation, paramount public policy requires that the court should look at the cause of action alone. *Morris* v. *Tuthill*, 72 N. Y. 575; *Bloxam* v. *Metropolitan Ry. Co.*, L. R. 3 Ch. 337, 353. There is no hardship in compelling a defendant to discharge his obligation; but there is grave danger in permitting him to plead the motive of every creditor who seeks to enforce it.

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[6] Lyon *v.* Washburn, 3 Col. 201.
[7] See 2 Taylor, Landlord and Tenant, § 707.
[8] Voss *v.* King, 33 W. Va. 236.
[9] See 1 Taylor, Landlord and Tenant, §§ 22, 65.